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**FILED**  
01/03/2023  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
41H-0669-R-2022  
Nordlund, Julia  
5.00

IN THE WATER COURT OF THE STATE OF MONTANA  
UPPER MISSOURI DIVISION  
GALLATIN RIVER BASIN (41H)  
PRELIMINARY DECREE

\* \* \* \* \*

CLAIMANT: Reed & Elaine Howald Rev Trust

**CASE 41H-0669-R-2022**  
41H 136548-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Clerk of the Montana Water Court. Please review this Report carefully.

You may file a written objection to this Master's Report if you disagree or find errors with the Master's Findings of Fact, Conclusions of Law, or Recommendations. The above stamped date indicates the date this Master's Report was filed and mailed. Pursuant to Water Right Adjudication Rule 23, written objections to a Master's Report must be filed within **10 days** of the date the Report was filed. If this Master's Report was mailed to you, Rule 6(d) of the Montana Rules of Civil Procedure provides an additional 3 days to the 10-day objection period.

If you file an objection, you must mail a copy of the objection to all parties on the Service List found at the end of this Master's Report. The original objection and a certificate of mailing to all parties on the Service List must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

## **MASTER'S REPORT**

Water right claim 41H 136548-00 appeared in the Preliminary Decree for the Gallatin River (Basin 41H) with issue remarks resulting from pre-decree examination by the Department of Natural Resources and Conservation (DNRC). The Water Court consolidated the claim into case 41H-0669-R-2022 to address the issue remarks.

## **FINDINGS OF FACT**

1. The Statement of Claim for irrigation claim 41H 136548-00 was filed by Elaine S. Howald and Reed A. Howald on April 30, 1982, for 60.00 miner's inches of Little Bridger Creek, for use on 18.00 acres across two places of use in the SENWSE and NESE of Sec. 9, Twp. 2S, Rge. 6E, Gallatin County.
2. Claim 41H 136548-00 appeared in the Basin 41H Preliminary Decree with the following issue remarks:  
  
THE CLAIMED PLACE OF USE AND ACRES IRRIGATED MAY BE QUESTIONABLE.  
REVIEW OF THE AVAILABLE DATA APPEARS TO INDICATE 11.00 ACRES IRRIGATED.  
  
FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.  
  
VOLUME MAY REQUIRE MODIFICATIONS BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
3. Pursuant to § 85-2-248(5), MCA, the Water Court ordered claimant Reed & Elaine Howald Revocable Trust to confer with the Bozeman Regional Office of the DNRC to resolve the foregoing issue remarks.
4. Claimants conferred with the DNRC Bozeman Regional Office, and on December 1, DNRC Water Resource Specialist Kara Huyser filed a memorandum of the conference with the Water Court. The Memorandum states that DNRC and Claimants agree upon the following modifications to claim 41H 136548-00, supported by historical Water Resources Survey (WRS) aerial imagery, topographic data, and information in the claim file:

- a. Reduce the claimed acres irrigated from 18.00 acres to 13.90 acres, as determined by historical WRS imagery and affidavits regarding water use available in the claim file.
- b. Claimant and DNRC agree upon the following modifications to the place of use legal land descriptions, with the acres irrigated reduction:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	2.90		NWNESE	9	2S	6E	GALLATIN
2	11.00		S2N2SE	9	2S	6E	GALLATIN

- c. Reduce the flow rate from the 305.20 gallons per minute (GPM) currently listed on the claim abstract, to 236.30 GPM as determined with the reduction in acres irrigated. Remove the associated flow rate issue remark.
- d. Remove the 60.0 acre-feet per year claimed volume quantification. Pursuant to Rule 15(c) of the Water Right Claims Examination Rules, a volume will not be decreed for direct flow irrigation rights, including flood and sprinkler system. Claim 41H 136548-00 is a flood and sprinkler irrigation claim, therefore the following standard information remark can be placed on the claim:

THE VOLUME OF THE RIGHT SHALL NOT EXCEED THE AMOUNT  
PUT TO HISTORICAL AND BENEFICIAL USE.

5. The Water Court can accept the modifications agreed upon between DNRC and Claimants. The following changes can be made to claim 41H 136548-00

- a. Maximum Acres: **13.90**

- b. Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	<b>2.90</b>		NWNESE	9	2S	6E	GALLATIN
2	<b>11.00</b>		S2N2SE	9	2S	6E	GALLATIN

- c. Flow Rate: **236.30 GPM**

Volume: **THE VOLUME OF THE RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.**

6. The foregoing changes resolve the issue remarks on claim 41H 136548-00, and the issue remarks can be removed from the claim abstract.

CONCLUSIONS OF LAW

1. The Water Court has exclusive jurisdiction to determine the extent of all water rights in Montana as they existed prior to July 1, 1973. *In re Deadman's Basin Water Users Ass'n*, 2002 MT 15, ¶ 15; Section 3-7-501, MCA.
2. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie status may be overcome by a preponderance of the evidence showing that an element of the claim is incorrect. Section 85-2-227, MCA; Rule 19, W.R.Adj.R. A preponderance of the evidence is evidence that shows a fact is "more probable than not." *Hohenlohe v. State*, 2010 MT 203, ¶ 33.
3. The claimant of a water right may waive the advantage of § 85-2-227, MCA. If a claimant agrees to reduce or limit an element of a claim, the Water Court does not need to determine whether the burden of proof has been met and may accept the reduction or limitation without further presentation of evidence, unless there is an unresolved issue remark on the claim. Rule 17(c), W.R.Adj.R.
4. Claimant Reed & Elaine Howald Revocable Trust waives the advantage of § 85-2-227, MCA, by agreeing to reduce the maximum number of irrigated acres of claim 41H 136548-00. There are no unresolved issue remarks on the claim, and the Water Court accepts the limitation without the presentation of further evidence.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends the Water Court make the above-specified changes to claim 41H 136548-

00. A Post Decree Abstract of Water Right Claim accompanies this Report to confirm the changes have been made in the State's centralized water right record system.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail:**

Reed & Elaine Howald Rev Trust  
% Reed & Elaine Howald Trustees  
1120 W. Babcock St Apt #12  
Bozeman, MT 59715

\\JUDGALH2OSRV\Data\vol\Share\WC-BASIN FOLDERS\41H PD\41H Cases\41H-R669\41H-669-R-2022 MR (ac irr reduction) 12-7-22 ld.docx

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**GALLATIN RIVER**  
**BASIN 41H**

**Water Right Number:** 41H 136548-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** HOWALD, REED & ELAINE REV TRUST  
%HOWALD REED & ELAINE TRUSTEES  
265 STORY HILL RD  
BOZEMAN, MT 59715 9640

**Priority Date:** JUNE 17, 1893

**Type of Historical Right:** FILED

**Purpose (use):** IRRIGATION

**Irrigation Type:** SPRINKLER/FLOOD

**Flow Rate:** 236.30 GPM

**Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 4 - MODERATELY LOW

**Maximum Acres:** 13.90

**Source Name:** LITTLE BRIDGER CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESE	9	2S	6E	GALLATIN

**Period of Diversion:** MAY 15 TO SEPTEMBER 30

**Diversion Means:** PUMP/FLOOD AND DIKE

**Period of Use:** MAY 15 TO SEPTEMBER 30

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	2.90		NWNESE	9	2S	6E	GALLATIN
2	11.00		S2N2SE	9	2S	6E	GALLATIN

**Total:** 13.90

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**Remarks:**

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

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